

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: January 21, 2004

TO : Victoria E. Aguayo, Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: World Wide Produce 133-3900
Case 21-CA-35900 524-0133-9300

This case was presented for advice on whether the Employer violated Section 8(a)(3) by discharging six Union supporters who failed to cure discrepancies in their social security numbers following the Employer's receipt of a "No Match" letter from the Social Security Administration.

We agree with the Region that the Employer has met its Wright Line¹ burden to show that it would have fired the six employees regardless of their Union activity.

The Employer is engaged in the wholesale distribution of produce, with offices and facilities located in Los Angeles, California. The Employer received a letter dated May 29, 2003,² from the Social Security Administration (SSA) listing 59 employee social security numbers provided by the Employer that failed to match the records of the Social Security office. The Employer claims that it contacted the SSA to determine what to do about the letter.

In June, the Union began organizing the Employer's warehouse employees, and filed a petition on June 13 in Case 21-RC-20638. The Union filed numerous charges against the Employer, and the Region is prepared to issue complaint alleging that the Employer unlawfully interrogated employees and threatened termination for Union activity. An election was scheduled for August 29 but is blocked by the current charge.

The six discriminatees named in this charge were open and active Union supporters. On various dates in August, the Employer informed each of the six employees in writing that SSA identified a discrepancy in their social security

¹ Wright Line, 251 NLRB 1083, 1089 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in NLRB v. Transportation Management Corp., 462 U.S. 393, 400 (1983).

² All dates are in 2003.

numbers. Each employee was given two weeks to clear up the discrepancy by visiting the SSA office and providing the Employer with a receipt indicating that the employee's social security documents are in order. None of these employees was able to provide the proper documentation and they were each terminated in late August/early September.

The Region has determined that the evidence would support a prima facie case that the Employer selected and terminated these six employees in retaliation for their Union support and activities. This evidence includes Employer knowledge about the organizing campaign as of June 13 when the Union filed the representation petition. The Employer then began interrogating employees, including some of these discriminatees, about their Union activity. The Employer's animus toward the Union is demonstrated through the numerous Section 8(a)(1) allegations that the Region has determined warrant complaint.

The Employer claims that the employees were terminated because they were unable to provide verification of their correct social security numbers. The Employer provided an explanation for each of the 59 employee social security numbers that appeared on the SSA list. The evidence showed that 25 of the employees had either resigned or were terminated for other reasons. Twenty-six employees were asked to and provided proper documentation. One of the employees was on leave of absence and one other insists his information is correct and has an attorney verifying his documentation. The six employees named in this charge were the only employees who were unable to provide documentation to verify their social security numbers. The Employer thus accounts for all of the social security numbers on the May 29 "No Match" letter.

In these circumstances, we agree with the Region that the Employer has met its Wright Line burden to show that it would have fired the six employees regardless of their Union activity. Based on its investigation, the Region concluded that the Employer treated equally all similarly situated employees. The Employer attempted to verify every social security number on the "No Match" letter. All employees who were able to resolve the discrepancy in their number were retained. Any employee who was unable to resolve the discrepancy was terminated. The six employees named in this charge were the only employees who were unable to verify their social security numbers. Therefore, we agree with the Region that the charge should be dismissed, absent withdrawal.

B.J.K.